IN THE HIGH COURT OF HIMACHA PRADESH SHIMLA

Civil Revision No 43 of 2002.

Judgment reserved on 30.4.2007.

Date of decision: 3.5.2007.

Des Raj ……. **Judgment Debtor/Petitioner.**

Versus

Mahavir Parshad …**Decree Holder /Respondent.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr. K.D.Sood, Advocate.**

For the Respondents: **Mr. N.K.Thakur,Advocate.**

Dev Darshan Sud, J. (Oral).

This revision has been preferred by the Judgment Debtor against the order of the learned Executing Court, dismissing the objections filed by the petitioner – Judgment Debtor under Section 47 of the Code of Civil Procedure.

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

The case has a very chequered history. The suit, after contest in the learned trial Court, has seen its course through the appellate procedure including appeal/ review to this Court and Special Leave Petitions which were filed in the Hon'ble Supreme Court of India.

This Court, in the second appeal, upheld the decree in favour of the plaintiff after which the matter was taken up in the Hon'ble Supreme Court. A review Petition (Civil Review No. 40/1998) was also filed in this Court which was dismissed. Against this order, Special Leave Petition (Civil) 1369/1999 was preferred which was dismissed by the Hon'ble Supreme Court on 10.1.2000. The decree is now being executed.

The Judgment Debtor has resisted execution of the decree principally on the ground that the property of which possession is to be delivered has not been properly identified in the execution petition. Another objection put forward by the Judgment Debtor is that an application under Sections 152, 153 and 153-A of the Code of Civil Procedure was moved by the Judgment Debtor for correction of the

clerical and arithmetical mistakes arising out of the accidental slip or omission in the judgment and decree with respect to the immovable property as described in clause A of the heading of the plaint. Initially, this application was filed in this Court which was registered as CMP 790 of 2002 and was later on sent to the trial Court for decision. By an order dated 13.2.2003, the correction has been carried out by consent of the parties.

Learned counsel for the Judgment Debtor submits that the decree which can be executed, is the amended decree which does not include the built up structures as claimed by the Decree Holder. I cannot accept this contention of the learned counsel. The application which was moved for correction was for specific khasra numbers as described in clause A of the plaint. The decree granted by the Court was in the following terms:

> " Shri Mahabir Parshad plaintiff is hereby declared as the legal heir of the estate left by Shri Pana Lal deceased comprising khewat No. 8, khatauni Nos. 25, 26, 27, 28, 29, 30, 31, 32, khasra Nos. 255, 51, 258,

27, 46, 831/53-54, 256, 257, 488, 489, 490, 491, 492, 493, 494, 496, 497, 498, 499, 500, 501, 502, 503, 504, 506, 507, 822/24-28, 30, 792/31, 797/31, 794/31, 796/31, 796/31, 32, 35, land measuring 4 kanals in area out of the land measuring 48 kanals 11 marlas in area bearing khewat No. 30, khatauni Nos. 82, 83, 84, 85, khasra Nos. 100. 112. 117, 121, 122 min, 125 min, 126 min, 126 min, 101, 274 and land measuring 6 kanals 11 marlas in area out of land measuring 33 kanals 6 marlas in area bearing khewat No. 31, khatauni Nos. 86, khasra Nos. 106, 120 and 519 as entered in jamabandi 1965-66 situate in village Chhaproh, Tehsil Amb, District Una and the property, the detail of which is as under:

(a) Double storeyed building bounded as :

East : House of Fauju-Onkar,

West :House of Pana Lal

North : Paurian,

South : Pahar

Situated in village Chintpurni alias Chhaproh, Tehsil Amb, District Una.

(b) Residential House bounded as:

East : House of Jagat Ram, Tara Chand and others

West : Lands of Ram etc.

South : Lands of Granthu Jagat Ram

North Houses of Chhote Lal and others, Situate in village Chintpurni alias Chhaproh, Tehsil Amb, Distt. Una.

(c) Other assets of Panna Lal deceased.

The decree for possession be issued accordingly. The defendant is also restrained from interfering permanently in the property referred to above. There shall however be no order as to costs. Decree sheet be drawn accordingly."

No correction has been made in the decree sheet regarding the double storeyed building and residential house as described therein or the other assets. From the material on record, I am not convinced that there has been abandonment of any part of the claim or decree by the plaintiff-decree holder. The suit has been contested at every stage and every proceeding pursued to its logical conclusion. I cannot read anything in the nature of an abandonment of claim or right by the plaintiff. The correction application was for a particular part to correct the description. There was no prayer for deletion of any part of the claim. The consent given by the decree holder cannot

be construed as such. This submission is, therefore, rejected.

Learned counsel for the Decree Holder submits that unless the property is properly described, no decree can be executed. As a proposition of law, there can be no doubt that execution can be granted only for property/ land / assets which are properly described. Learned counsel has placed reliance on judgment of the Hon'ble Supreme Court in Pratibha Singh and another v. Shanti Devi Prasad and another (2003) 2 SCC 330). Learned counsel has drawn my attention to paragraphs 15 and 17, which are reproduced as under:

> **"15. Order 7 Rule 3 CPC requires where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such description enables the court to draw a proper decree as required by Order 20 Rule 3 CPC. In case such property can be identified by boundaries or numbers in a record for settlement of survey,**

the plaint shall specify such boundaries or numbers……

17. When the suit as to immovable property has been decreed and the property is not identified, the defect in the Court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case – which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within

the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accident slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC."

As noticed, there can be no dispute regarding the fact that exact description of the property has to be given. In the present case, the Judgment Debtor cannot profess ignorance about the property regarding which execution has been filed. In para 14 of the plaint, the plaintiff had made the following claim:

"14. That Panna Lal deceased was also owner and in possession of the properties detailed below:

a) Double storeyed building bounded as :
East : House of Fauju-Onkar,
West : House of Pana Lal
North : Paurian,
South : Pahar
Situated in village Chintpurni alias Chhaproh, Tehsil Amb, District Una.

b) Residential House bounded as:
East : House of Jagat Ram, Tara Chand and others
West : Lands of Ram etc.
South : Lands of Granthu Jagat Ram
North Houses of Chhote Lal and others,
situate in village Chintpurni alias Chhaproh, Tehsil Amb, Distt. Una.

c) Other assets of Panna Lal deceased.

In the written statement, two averments have been made by the Judgment Debtor:

> **"1. That the defendant is in possession of the property in suit. The suit for declaration as framed is not maintainable. The defendant is in possession of the property detailed in para No. 14 of the plaint as well as the entire property subject matter of the suit.**
>
> **14. In reply to para No. 14 it is submitted that the property detailed in sub para (a) of para No. 14 was owned by Shri Panna Lal and the defendant is in possession of the same. The defendant is also in possession of the residential house detailed in sub**

> **para (b) as well, as heir and owner under the said Will of Panna Lal deceased. Sub para (c) is vague and ambiguous. At any rate, the defendant is in possession of the entire assets left by Shri Panna Lal deceased."**

The defendant is aware about the property regarding which execution proceedings have been filed. He cannot profess ignorance regarding the built up structures described in para 14-a and b of the plaint. He seems to be deliberately avoiding the execution. The controversy between the parties has been adjudicated by this Court twice and twice by the Hon'ble Supreme Court.

The objection of the learned counsel for the Judgment Debtor that the description of the property is not proper and the property should be defined and described with clarity is justified to the limited extent that some spot map has to be filed. However, professing total ignorance regarding the existence of the property or a bare denial about its existence in the executing Court cannot be permitted. This would

amount to an abuse of the process of law. Objections under Section 47 are meant for determination of issues and not for avoidance determination of issues arising during execution and deliberate attempts to avoid execution on the flimsiest pretexts. In view of the admission made by the Judgment Debtor in the written statement, there would be no fetter in the power of the executing Court to call upon him to identify the property if he is objecting to execution. After-all as observed by the Hon'ble Supreme Court in *Pratibha Singh's* case, supra, the exact description of the decretal property can be ascertained by the executing court. This exercise can be undertaken with the material on record or by calling upon the parties to furnish better particulars.

This revision is disposed of with direction that the executing Court will direct the Decree Holder to file spot map of the property as described in para 14 of the plaint. In case of any ambiguity, the Judgment Debtor will be called upon to show the property in his possession which he admits is in his occupation as averred in Para 14 of his written

statement. The execution petition is disposed of in these terms. There shall be no order as to costs. Needless to say that the petition will be disposed of expeditiously by the executing Court as the matter has been pending in various Courts for a period of more than 20 years.

April 3, 2007 (PC). **(Dev Darshan Sud), J.**